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DR. JOEL H. GERSHENSON
BLGD. 32 UNIT 103
7331 N.W. 18th ST.
MARGATE FL 33063

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In re Application of
Joel H. Gershenson
Application No. 10/715,076
Filed: 17 November, 2003
For: PROTECTIVE TRAUMA DEVICE
STRAPS FOR HELMETS

OFFICE OF PETITIONS
ON PETITION

This is a decision on the paper filed on 13 December, 2004, which is treated as a petition requesting withdrawal of the holding of abandonment under 37 CFR 1.181.

The Office apologizes for the delay in responding to the present petition and regrets any inconvenience to petitioner.

The petition is dismissed.

The application became abandoned on 27 November, 2004, for failure to timely file a response to the non-final Office action mailed on 26 July, 2004, which set a three (3) month shortened statutory period for reply. On 22 October, 2004, a one-month extension of time in accordance with 37 CFR 1.136(a) was obtained. No reply having been received, however, Notice of Abandonment was mailed on 27 June, 2005.

Petitioner asserts that a response was timely mailed to the USPTO via Express Mail on 24 November, 2004, but was returned as undeliverable to petitioner. In support, petitioner has provided a copy of the Express Mail label for the response showing that the reply was addressed to: U.S. Trademark and Patents, Randolph Building, 401 Dulany Street, Room 7C-79, Alexandria VA 22313, Mr. Lindsey, Rodney.

Petitioner's argument has been considered, but is not persuasive. On 24 November, 2004, the address for patent mail sent to the USPTO by the USPS was: Mail Stop _____, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.¹ The address placed on the Express Mail customer label was not a correct

¹ 1288 O.G. 41 (2 November, 2004).

address. As such, in accordance with 37 CFR 1.1(a) and 1.10(e), the correspondence allegedly mailed to the USPTO on 24 November, 2004, was not properly addressed.

37 CFR 1.135 states, in pertinent part:

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and 1.136, the application will become abandoned unless an Office action indicates otherwise

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) must include such complete and proper reply as the condition of the application may require.

In the instant case it is clear that petitioner did not file a timely reply in that the correct address for sending correspondence to the Office was not used. As the showing of record is that the correspondence was not received in the Office due to an error on the part of petitioner in providing an incorrect address for the USPTO, the holding of abandonment will not be withdrawn.

The petitioner may want to consider filing a petition to revive under 37 C.F.R. 1.137(b).

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision. Extensions of this time period are available in accordance with the provisions of 37 C.F.R. 1.136(a).

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions